

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

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DISTRICT OF UTAH
BY: _____
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LENDON T. PHILLIPS, Jr.)	Case No. 2:02CV01369 DS
Plaintiff,)	
vs.)	MEMORANDUM OPINION & ORDER
ANDERSON BUSINESS ENTERPRISES,)	ADDRESSING CROSS MOTIONS
a Utah Limited Partnership, DBA)	FOR SUMMARY JUDGMENT
PINEWOODS RESORT,)	
Defendants.)	

I. Introduction

Plaintiff Lendon Phillips brought suit against Anderson Business Enterprises, dba Pinewoods Resort, for personal injuries he sustained in October of 2000 while he was a business invitee at the resort. Plaintiff was carrying a cooler from his rental cabin to his car when a step in the stairway leading from the cabin broke loose, causing him to fall. The plaintiff reported the accident and the broken step, and within a few hours the defendant had the step repaired. Phillips claims that Defendant was negligent in failing to maintain the steps in a safe condition and failing to warn business invitees of the unsafe condition of the steps.

Plaintiff has moved for partial summary judgment on the issue of Defendant's liability, claiming that his fall and resulting injuries occurred because of Defendant's negligence; therefore, the defendant is liable for those injuries.

Defendant has also moved for summary judgment on the issue of breach of duty, claiming that the plaintiff cannot sustain a prima facie case of breach of duty since the defendants were not on actual notice of a defect in the stairway, nor through the exercise of reasonable care, could they have determined that there was a latent defect in the stairs.

II. Summary Judgment Standard

Under Fed. R. Civ. P. 56, summary judgment is proper only when the pleadings, affidavits, depositions or admissions establish there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. The burden of establishing the nonexistence of a genuine issue of material fact is on the moving party.¹ E.g., Celotex Corp. v. Catrett, 477 U.S. 317 (1986). In determining whether summary judgment is appropriate, the court views all relevant facts in the light most favorable to the party opposing the motion. Summary judgment is appropriate only where the evidence “is free from doubt so that all reasonable [persons] would come to the same conclusion” *Schnuphase v. Storehouse Markets*, 918 P.2d 476, 477 (Utah 1996).

In a negligence action, like the present one, the plaintiff has the burden of establishing four elements: “that the defendant owed the plaintiff a duty; that defendant breached the duty (negligence); that the breach of the duty was the proximate cause of the plaintiff’s injury; and

¹Whether a fact is material is determined by looking to relevant substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

that there was in fact injury.” *Steffensen v. Smith’s Management Corp.*, 820 P.2d 482, 485 (Utah App. 1991). The Utah Court of Appeals, in *Kitchen v. Cal Gas Company, Inc.*, 821 P.2d 458, 460 (Utah App. 1991), stated: “The issue of negligence, or breach of a legal duty, is normally a question of fact for the jury (citation omitted). Accordingly, summary judgment is generally improper on the issue of negligence and only in clear-cut cases, with the exercise of great caution, should a court take the issue of negligence from the province of the jury.” Therefore, this court must proceed with “great caution” in considering these motions to dismiss.

III. Discussion

A. Plaintiff’s Motion for Summary Judgment

The plaintiff in this case has not met his burden of establishing the nonexistence of a genuine issue of material fact. In his argument, the plaintiff relies heavily on a line of slip and fall cases which involve a business invitee slipping on something on a grocery store floor and falling. These cases all focus on whether the dangerous condition was permanent or temporary. However, because these cases are factually distinguishable from the present case, the inquiry into whether the condition was permanent or temporary is irrelevant to this court’s decision. The more relevant case law here deals with the duty of innkeepers to insure the safety of their guests.

In determining whether an innkeeper, in this case the defendant resort, has been negligent in providing for the safety its guests, the plaintiff must established the four elements of negligence: 1) that the defendant owed the plaintiff a duty, 2) that defendant breached the duty

(negligence); 3) that the breach of the duty was the proximate cause of the plaintiff's injury; and 4) that there was in fact injury to the plaintiff. *See Steffensen*, at 485. The plaintiff must demonstrate these elements with evidence that is free from doubt and would cause all reasonable persons to reach the same conclusion in order for his motion for summary judgment to be granted.

There is no question that the defendant in this case owed the plaintiff a duty. Innkeepers have a duty to exercise reasonable and ordinary care and prudence to maintain their premises—including steps and stairs which they may reasonably expect a guest to use—in a reasonably safe condition. *See Moore v. James*, 297 P.2d 221 (Utah 1956), and *Carpenter v. Syrett*, 104 P.2d 617 (Utah 1940). Utah courts have held repeatedly that “An innkeeper is not an insurer of the safety of its guests but owes them ordinary care to see that the premises assigned to them are reasonably safe for their use and occupancy.” *Mitchell v. Pearson Enterprises*, 697 P.2d 240, 243 (Utah 1985).

Although the defendant here clearly had a duty to the plaintiff, there is a genuine issue of material fact with regard to the second element of negligence, the breach of that duty. As stated above, the issue of breach of a legal duty is usually a question of fact for the jury. Summary judgment is generally inappropriate on the issue of negligence, unless there is no doubt that the defendants did in fact breach their legal duty.

The defendant resort in this case has provided ample affidavit testimony that it maintained its property in a reasonable manner, and therefore did not breach its legal duty. David L. Badham, who has been a general contractor for over 20 years, testified that the stairway was built properly, in accordance with code, and within industry standards. The stairway had performed its function properly for many years. The plaintiff himself, in his affidavit, stated that prior to the accident there was “no observable indication of weakness, damage or instability in the step and its attachment to the stairway.” The defendant had a full-time maintenance man whose sole responsibility was to walk the property, maintain the facility, and look for any unsafe condition. Staff personnel had been instructed to report any problems they noticed on the premise. No prior report of problems had been received from either employees or guests of the resort. (See Affidavit of Bryan Romney.) The first indication the defendant had that there was any problem with the step was when the plaintiff reported his accident.

A reasonable jury could conclude from the above facts that the defendant did not, in fact, breach its legal duty of ordinary care to the plaintiff in keeping the premises reasonably safe. Considering the facts in a light most favorable to the defendant, who is the non-moving party, the court must deny plaintiff’s motion for summary judgment.

Because the motion is denied based on the breach of duty element, it is unnecessary for the court to consider the final two elements of negligence—proximate cause and actual injury—at this time.

B. Defendant's Motion for Summary Judgment

The defendant in this case has also moved for summary judgment. The court finds that the defendant has also failed to meet the burden of establishing the nonexistence of a genuine issue of material fact. The defendant resort argues that the dangerous condition of the stairway was a latent defect that could not have been discovered through reasonable care. The Utah Court of Appeals, in *Ilott v. University of Utah*, 12 P.3d 1011 (Utah App. 2000), quoted *Black's Law Dictionary* in defining a latent defect as one "which reasonably careful inspection will not reveal." The court then stated that generally questions of reasonableness present questions of fact which should be reserved for the jury. *Id.* at 1015. In the *Ilott* case a business invitee attending a football game, fell when one plank in the wooden bleachers at the stadium broke beneath her as she walked down. She brought a negligence suit against the University for the injuries she sustained. The court of appeals reversed the trial court's grant of summary judgment for the University, stating that "Ilott has raised a material issue of factual dispute regarding whether this case involves a latent defect" *Id.* at 1015. Similarly, the issue in the present case of whether or not the defect was latent is a material issue of dispute that should be reserved for the jury.

As shown above, the defendant has provided a considerable amount of evidence that it did in fact reasonably maintain its property. However, Utah courts have consistently applied the doctrine of *res ipsa loquitur* to negligence cases like this one. The *res ipsa loquitur* doctrine "is an evidentiary doctrine used in a negligence action to establish the defendant's duty of care and the breach of that duty." *Virginia S. v. Salt Lake Care Center*, 741 P.2d 969, 971 (Utah App. 1987).

The rule, when it applies, gives rise to an inference of negligence, and takes the plaintiff's case past a nonsuit. The rule is applicable when: "(1) The accident was of a kind which, in the ordinary course of events, would not have happened had the defendant used due care, (2) the instrument or thing causing the injury was at the time of the accident under the management and control of the defendant, and (3) the accident happened irrespective of any participation at the time by the plaintiff." *Moore v. James*, 297 P.2d 221, 224 (Utah 1956). Once a party establishes the elements of *res ipsa loquitur*, "there arises a 'rebuttable inference of negligence which will carry the [party's] case past the motion for nonsuit'" *Kitchen v. Cal Gas Company, Inc.*, 821 P.2d 458, 464 (Utah App. 1991). The plaintiff is then entitled to a *res ipsa loquitur* jury instruction, and "it becomes the jury's function, not the trial court's, to weigh conflicting evidence." *Virginia S.*, at 971.

While *Moore* is an older case, it is frequently cited in negligence cases, and it is factually very similar to the present case. The plaintiff in *Moore* sued to recover damages for personal injuries caused when a corner leg of a hotel bathtub she was standing in collapsed, allegedly causing her to fall backward to the floor. After the accident it was discovered that the screw holding the leg in place was loose and the leg had slipped out. The Utah Supreme Court held that the accident was the kind which would not have happened if the defendants had used due care, that the defendant had control of the bathtub and legs supporting it which caused the defendant's injuries, and the plaintiff did not contribute to the accident. The court concluded that there was an inference of negligence on the part of the defendants and that the trial court's refusal to submit the doctrine of *res ipsa loquitur* to the jury was error. *Moore*, at 224. Similarly, we

conclude that the issue of negligence in this case requires a factual inquiry that should be decided by a jury.

In accordance with the *Hott* case on the issue of latent defects, and also the *Moore* case and subsequent res ipsa loquitur cases, this court finds that summary judgment in favor of the defendant is not appropriate in the present case.

III. CONCLUSION

For the foregoing reasons, both Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment are denied.

SO ORDERED.

DATED this 10th day of March, 2004.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "David Sam", written over a horizontal line.

DAVID SAM
SENIOR JUDGE
U.S. DISTRICT COURT

United States District Court
for the
District of Utah
March 12, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01369

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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